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23  
24 **IN THE UNITED STATES DISTRICT COURT**  
25 **FOR THE DISTRICT OF ARIZONA**

26 United Food & Commercial Workers Local  
27 99; Local Union No. 469 of the United  
28 Association of Journeymen & Apprentices  
of the Plumbing & Pipefitting Industry of  
the United States & Canada; James  
McLaughlin; Phillip A. McNally, Jr.;  
Roberta Colbath; and David J. Rothans,

Plaintiffs,

and

Arizona Education Association; American  
Federation of State, County and Municipal  
Employees Local 449; American Federation  
of State, County and Municipal Employees  
Local 2384; American Federation of State,  
County and Municipal Employees Local  
2960; American Federation of State, County  
and Municipal Employees Local 3111;

No. 2:11-cv-00921-GMS

**COMPLAINT IN INTERVENTION  
FOR INJUNCTIVE AND  
DECLARATORY RELIEF**

American Federation of State, County and  
Municipal Employees Local 3282; Arizona  
Federation of Teachers Union; Service  
Employees International Union, Local 5;  
Melissa England; Kerry-Lynn Scheffler; and  
Danielle Nowak,

Plaintiff-Intervenors,

vs.

Janice Brewer, in her capacity as Governor  
of the State of Arizona; Thomas Horne, in  
his capacity as Attorney General of the State  
of Arizona; Ken Bennett, in his capacity as  
Secretary of State of the State of Arizona;  
Randall Maruca, in his capacity as Director  
of the Department of Labor of the Industrial  
Commission of Arizona; and Joe Arpaio, in  
his capacity as Sheriff of the County of  
Maricopa,

Defendants.

## **NATURE OF THE ACTION**

1. In this lawsuit, plaintiffs challenge Arizona Senate Bills 1363 and 1365 (respectively, “SB 1363” and “SB 1365”), attached hereto as Exhibits A and B. SB 1363 and SB 1365 are two recently enacted Arizona laws designed to curtail or eliminate speech by labor organizations and other pro-employee groups in Arizona. *See* S.B. 1363, 50th leg., 1st Reg. Sess. (Ariz. 2011); S.B. 1365, 50th leg., 1st Reg. Sess. (Ariz. 2011). SB 1365, enacted as 2011 Session Law Chapter 251 and to be codified at A.R.S. § 23-361.02 (effective July 20, 2011), suppresses political activity by Arizona labor organizations by prohibiting all but a select few employees from choosing to pay their union dues via payroll deduction, unless their union complies with vague disclosure and authorization requirements and risks significant monetary penalties if it fails to accurately determine what the law requires. SB 1363, enacted as 2011 Session Law Chapter 153, imposes draconian limitations on speech, assembly, and other expressive activity by labor organizations, subjects labor organizations to heightened criminal liability for speech-

1 related activities, and provides Arizona employers with special protections from  
 2 defamation and trespass that are not available to other Arizonans, while providing those  
 3 employers with a statutory right to pursue actions for defamation and trespass that extend  
 4 far beyond what the courts have held permissible in the labor speech and First  
 5 Amendment contexts.

6 2. SB 1363 and SB 1365 violate plaintiffs' rights under the United States  
 7 Constitution, including their rights to free speech under the First and Fourteenth  
 8 Amendments; their right to equal protection of the laws under the Fourteenth  
 9 Amendment; their right to due process under the Fourteenth Amendment; their rights  
 10 under the Supremacy Clause, U.S. Const. art. VI, cl. 2; and their rights under the Contract  
 11 Clause, U.S. Const. art. I, § 10.

12 3. Plaintiffs seek: (1) a declaratory judgment that SB 1363 and SB 1365 are  
 13 unconstitutional on multiple grounds, pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule  
 14 57 of the Federal Rules of Civil Procedure; (2) an injunction against the implementation  
 15 and enforcement of SB 1365, SB 1363, and the limitations on boycotts and picketing set  
 16 forth at A.R.S. §§23-1322, 23-1323, pursuant to Rule 65 of the Federal Rules of Civil  
 17 Procedure; and (3) an award of attorneys' fees, pursuant to 42 U.S.C. § 1988.

## 18 **JURISDICTION AND VENUE**

19 4. This Court has subject-matter jurisdiction under 28 U.S.C. §1331 because  
 20 this action arises under the Constitution and laws of the United States. This Court also  
 21 has subject-matter jurisdiction under 28 U.S.C. §1343(a)(3), because this action seeks to  
 22 redress the deprivation, under color of State law, of rights secured by the Constitution and  
 23 laws of the United States.

24 5. Venue is proper in this Court under 28 U.S.C. §1391(b).

## 25 **PARTIES**

26 6. Plaintiff Arizona Education Association (AEA), a nonprofit corporation, is  
 27 the largest professional organization and union in Arizona, with more than 28,000 active,  
 28 retired, and student members. AEA members are public school teachers, community

1 college professors, counselors, speech pathologists, bus drivers, secretaries, retired  
2 educators, and student teachers, who belong to more than 164 local AEA affiliates across  
3 Arizona. AEA is the Arizona affiliate of the National Education Association (“NEA”),  
4 which represents approximately 3.2 million members who work in the education field.  
5 NEA and its affiliates, including AEA, have a unified membership structure, under which  
6 membership in a state affiliate includes membership in the national and local affiliate. As  
7 a consequence, a member’s dues payments include dues paid to the local, state and  
8 national associations.

9       7. Plaintiff Melissa England is a teacher and member of AEA and NEA.  
10 Plaintiff England is employed by the Dysart Unified School District to teach world  
11 history and government. She executed her contract for employment in the 2011-12  
12 school year on April 15, 2011. Plaintiff England has paid—and wishes to continue  
13 paying—the full amount of her AEA and NEA dues by voluntary payroll deduction  
14 pursuant to school district policies that are incorporated into her individual employment  
15 contract.

16       8. Plaintiff Kerry-Lynn Scheffler is a teacher and member of AEA and NEA.  
17 Plaintiff Scheffler is employed by the Deer Valley Unified School District to teach  
18 kindergarten. She executed her contract for employment in the 2011-12 school year on  
19 April 27, 2011. Plaintiff Scheffler has paid—and wishes to continue paying—the full  
20 amount of her AEA and NEA dues by voluntary payroll deduction pursuant to school  
21 district policies that are incorporated into her individual employment contract.

22       9. Plaintiff Danielle Nowak is a teacher and member of AEA and NEA.  
23 Plaintiff Nowak is employed by the Scottsdale Unified School District to teach second  
24 grade. She executed her contract for employment in the 2011-12 school year on or about  
25 May 11, 2011. Plaintiff Nowak has paid—and wishes to continue paying—the full  
26 amount of her AEA and NEA dues by voluntary payroll deduction pursuant to school  
27 district policies that are incorporated into her individual employment contract.  
28

1           10. Plaintiff American Federation of State, County and Municipal Employees  
2 Local 449 (“Local 449”) is a labor union with approximately 900 members and which  
3 represents public service workers employed in the public sector by the City of Tucson,  
4 Pima Community College and Tucson Unified School District, as well as some private  
5 sector employees. Local 449 brings this action on its own behalf and on behalf of its  
6 members.

7           11. Plaintiff American Federation of State County and Municipal Employees  
8 Local 2384 (“Local 2384”) is a labor union with approximately 825 members and which  
9 represents public service workers employed in the public sector by the City of Phoenix.  
10 Local 2384 brings this action on its own behalf and on behalf of its members.

11           12. Plaintiff American Federation of State, County and Municipal Employees  
12 Local 2960 (“Local 2960”) is a labor union with approximately 983 members and which  
13 represents public service workers employed in the public sector by the City of Phoenix.  
14 Local 2960 brings this action on its own behalf and on behalf of its members.

15           13. Plaintiff American Federation of State, County and Municipal Employees  
16 Local 3111 (“Local 3111”) is a labor union with approximately 659 members and which  
17 represents public service workers employed in the public sector by the State of Arizona.  
18 Local 3111 brings this action on its own behalf and on behalf of its members.

19           14. Plaintiff American Federation of State, County and Municipal Employees  
20 Local 3282 (“Local 3282”) is a labor union with approximately 91 members and which  
21 represents public service workers employed in the public sector by the City of Peoria.  
22 Local 3282 brings this action on its own behalf and on behalf of its members.

23           15. Local 449, Local 2384, Local 2960, Local 3111 and Local 3284  
24 (collectively, “AFSCME Plaintiffs”) are affiliates of the American Federation of State,  
25 County and Municipal Employees, AFL-CIO (“AFSCME”), an international labor union  
26 with approximately 1.6 million members. Under AFSCME’s federated structure every  
27 member of an AFSCME local union is also a member of the international union. As a  
28

1 consequence, an AFSCME member's dues payments include dues paid to her local union  
2 and to AFSCME.

3 16. Plaintiff Service Employees International Union, Local 5 (SEIU Arizona),  
4 is a labor union that primarily represents state, county, and municipal public service  
5 employees in Arizona, and also represents private employees. SEIU Arizona is an  
6 affiliate of the Service Employees International Union (SEIU), which represents 2.2  
7 million working men and women around the world. SEIU Arizona, SEIU, and their  
8 members depend upon their free speech rights, including their rights to engage in  
9 picketing, mass assembly, and information campaigns, in their efforts to improve the  
10 working conditions and economic status of SEIU's members and of working people  
11 generally, and to address other issues of concern to SEIU Arizona and its members.  
12 SEIU Arizona brings this action on its own behalf and on behalf of its members.

13 17. Plaintiff SEIU Arizona and its members regularly exercise their rights of  
14 speech, assembly, and other expressive activity under the First Amendment in connection  
15 with matters involving Arizona employers and on issues of concern to SEIU Arizona and  
16 its members, and regularly exercise their rights under federal labor law. Plaintiff SEIU  
17 Arizona and its members intend to continue exercising those rights in the future. For  
18 example, SEIU Arizona and its members have engaged in picketing relating to labor  
19 disputes with Arizona employers, as well as picketing arising from non-labor disputes,  
20 such as picketing, leafleting, and assembly focused on unfair lending practices. SEIU  
21 Arizona and its members have organized, led, or attended rallies, including rallies near  
22 the offices of their public or private employers, and they intend to continue to do so in the  
23 future. SEIU Arizona and its members have also criticized Arizona employers, including  
24 public officials who direct government entities whose employees are represented by  
25 SEIU Arizona, and they intend to continue to do so.

26 18. Plaintiff Arizona Federation of Teachers Union (AFTU) is a labor union  
27 operating in Arizona. The AFTU is the state affiliate of the American Federation of  
28 Teachers (AFT), a national organization of more than 1.5 million members, a majority of

1 whom work in public education. AFTU members are non-administrative certificated and  
 2 support personnel who work in Arizona public schools and belong to local AFT affiliates  
 3 across Arizona. The AFTU assists those members with their job related issues, both  
 4 individually and collectively. As the statewide AFT organization, the AFTU engages in  
 5 legislative and issue-oriented advocacy on behalf of AFT affiliates in Arizona. AFT  
 6 affiliates in Arizona, including AFTU, have a unified membership structure, under which  
 7 membership in a local affiliate includes membership in the state and national unions. To  
 8 that end, a member's dues payments include dues paid to the local, state and national  
 9 union.

10 19. Defendant Tom Horne is the Attorney General of Arizona and is named as  
 11 a defendant in this action in his official capacity. The Attorney General is Arizona's  
 12 chief legal officer. A.R.S. §41-192(A). As Attorney General, defendant Horne is  
 13 responsible for promulgating rules for the administration of SB 1365 and for prosecuting  
 14 civil penalty actions for violations of SB 1365.

15 20. Defendant Ken Bennett is the Secretary of State of Arizona and is named as  
 16 a defendant in this action in his official capacity. SB 1363 requires the Secretary of State  
 17 to establish, compile, and distribute a "No trespass public notice list" to assist employers  
 18 in suppressing speech by labor organizations and other "individual[s] or group of  
 19 individuals acting on employees' behalf."

20 21. Defendant Joe Arpaio is the Sheriff of Maricopa County and is sued in his  
 21 official capacity. Defendant Arpaio is charged with arresting those who commit public  
 22 offenses in Maricopa County. A.R.S. §11-441. Without relief from this Court, defendant  
 23 Arpaio and his deputies are likely to enforce the provisions of SB 1363 against plaintiff  
 24 SEIU Arizona and its members in Maricopa County.

## 25 **FACTUAL AND LEGAL BACKGROUND**

### 26 **SB 1365**

27 22. Arizona is a "Right to Work" state. The Arizona Constitution and the  
 28 Arizona "Right to Work" statute specifically prohibit requiring union membership as a



1 condition of employment. *See* Ariz. Const. art. 25; A.R.S. §§ 23-1301, *et seq.* These  
 2 provisions also forbid any requirement that a non-member employee subsidize any part of  
 3 the union's operation. Thus, any employee in Arizona who pays dues to a union does so  
 4 completely voluntarily and for the purpose of associating with the union as a full-fledged  
 5 member.

6 23. Public employers in Arizona are prohibited from deducting union dues or  
 7 fees from an employee's paycheck without consent. Before the enactment of SB 1365,  
 8 public employers could, and frequently did, honor employees' written voluntary requests  
 9 to have their union membership dues deducted from their payroll checks. *See* Ariz. Atty.  
 10 Gen. Op. I86-49 (1986); *see also* A.R.S. § 23-352 (requiring written consent from the  
 11 employee for any deduction from wages unless the deduction is required by state or  
 12 federal law or there is a reasonable good faith dispute as to the amount of wages due).

13 24. On April 26, 2011, Governor Janice Brewer signed into law SB 1365,  
 14 which its sponsors labeled the "Protect Arizona Employees' Paychecks from Politics  
 15 Act." *See* S.B. 1365, 50th leg., 1st Reg. Sess. (Ariz. 2011), to be codified at A.R.S. § 23-  
 16 361.02. SB 1365's substantive prohibitions will go into effect on October 1, 2011, and  
 17 will prevent employers, as of that day, from honoring all but a select group of employees'  
 18 voluntary choices to pay their union dues through payroll deduction.

19 25. SB 1365 exempts from its payroll deduction requirements a select group of  
 20 employees defined as "public safety employee[s]," which include peace officers, fire  
 21 fighters, corrections officers and surveillance officers, whether employed by the State of  
 22 Arizona or by one of its subdivisions. A.R.S. § 23-361.02(H). As explained by one of  
 23 SB 1365's sponsors, Rep. Javan Mesnard (R-Chandler), the carve-out for "public safety"  
 24 employees was included because "there is a soft spot in most of our hearts . . . for public  
 25 safety personnel." *See* Video of House Republican Caucus, April 12, 2011 at 34:12  
 26 (available at [http://azleg.granicus.com/MediaPlayer.php?view\\_id=13&clip\\_id=9143](http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=9143)).  
 27 When Sen. Frank Antenori (R-Tucson)—SB 1365's principal sponsor and the sponsor of  
 28 the amendment creating the "public safety employee" exemption—was questioned about



1 the justification for his amendment, he candidly acknowledged that this exemption for  
2 public safety employees was the product of a backroom political deal, stating:

3 [I]t is an agreement that was reached through various stakeholders that decided  
4 that that language would best meet both the desires of those listed in that  
5 [amendment] and those that are supporting this bill. . . . They [*i.e.*, unions for  
6 “public safety” employees] asked to be exempted and they were discussing the  
7 issues with various entities involved and we agreed that those entities would be  
8 exempted from this bill for that purpose. . . . It was just an agreement and that was  
9 pretty much it.

10 *See* Video of Senate Floor Session Part 4 - Committee of the Whole #2, March 1, 2011 at  
11 9:30 (available at: [http://azleg.granicus.com/MediaPlayer.php?view\\_id=13&clip\\_id=](http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=8654)  
12 [8654](http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=8654))

13 26. SB 1365 prohibits Arizona employers, on pain of substantial civil penalties,  
14 from honoring their covered (*i.e.*, non-public safety) employees’ voluntary written  
15 requests to pay their union dues via payroll deduction, unless their union:

- 16 a. provides the employer, in advance, with a statement that the dues  
17 payment will not be used for “political purposes,” or
- 18 b. provides the employer, in advance, with a statement “that indicates the  
19 maximum percentage of the payment that is used for political purposes,”  
20 and the individual employee then authorizes the payment of the dues for  
21 both the political and nonpolitical purposes.

22 A.R.S. § 23-361.02(A)-(B).

23 27. SB 1365 defines “political purposes” to mean “supporting or opposing any  
24 candidate for public office, political party, referendum, initiative, political issue  
25 advocacy, political action committee or other similar group.” *Id.* § 23-361.02(I). These  
26 broad terms are not further defined in the statute—including the key modifier “political”  
27 and the wide-open reference to “political issue advocacy,” each of which could  
28 encompass many of the activities of any public-sector union, including AEA, SEIU  
Arizona, AFTU, and their local affiliates, and the AFSCME Plaintiffs.

1           28.     SB 1365 charges the Attorney General with prescribing forms for the  
2 disclosure a union must make if it wishes to receive members' voluntary membership  
3 dues through a payroll deduction from a willing employer. *Id.* § 23-361.02(C). If the  
4 union will engage in no "political" activity using member dues, it can submit the form  
5 prescribed by the Attorney General so indicating. *Id.* § 23-361.02(B). If the union will  
6 engage in "political" activity using any portion of member dues, it must disclose to the  
7 employer the "maximum percentage" of dues to be used for such purposes on a form  
8 prescribed by the Attorney General. *Id.* The Attorney General, however, is not charged  
9 with promulgating the required forms until 90 days after the July 20, 2011 effective date  
10 of the statute. *Id.* § 23-361.02(C). Thus, the Attorney General is not required to release  
11 the forms required for compliance with the law until October 18, 2011, which is after SB  
12 1365's effective date of October 1, 2011.

13           29.     Once the union furnishes the required disclosure form, the employer can  
14 only deduct the portion of the member's dues that the union specified for "nonpolitical  
15 purposes" in its disclosure form—unless that member provides an additional "annual  
16 written or electronic permission" to deduct the portion specified in the disclosure form  
17 for "political purposes." *Id.* § 23-361.02(A)-(B). The Attorney General is charged with  
18 prescribing the form a union member must use to have the "political" portion of dues  
19 remitted to the union. *Id.* § 23-361.02(C).

20           30.     SB 1365 imposes potentially ruinous penalties for even minor—and, in the  
21 case of unions, inadvertent—deviations from the procedure described above. SB 1365  
22 provides that "[i]f an employer knowingly deducts payments in violation of subsection  
23 (A) of this section [the prohibition against payroll deductions without an employee's  
24 authorization] or an entity provides an inaccurate statement under this section [meaning a  
25 statement that does not comply with the form of the disclosures that the Attorney General  
26 may ultimately require], the respective employer or entity is subject to a civil penalty of  
27 at least ten thousand dollars for each violation." *Id.* § 23-361.02(D). Thus, even if a  
28 union's members unambiguously consent to the deduction of dues for both political and

1 non-political purposes, the union would still be liable for fines of at least \$10,000 per  
2 violation for any minor or inadvertent mistake in the disclosure form the union submits to  
3 the employer. The prospect of a \$10,000 fine for such an error is itself draconian and  
4 chilling; but the statute in fact includes no cap on the size of the fine that could be  
5 assessed. Tellingly, an employer is subject to such a fine only for a “knowing[.]”  
6 violation: for a union, the violation is a strict liability offense.

7         31. SB 1365 does not subject all voluntary employee requests for payroll  
8 deductions to the authorization process and penalty provisions described above. SB 1365  
9 specifically exempts: “[s]ingle deduction[s] for nonpolitical purposes”; deductions for  
10 “savings or charitable contributions”; deductions for “employee health care, retiree, or  
11 welfare benefits”; deductions for “state, local or federal taxes”; and deductions for  
12 contributions to corporate and union political action committees under the Federal  
13 Election Campaign Act, at 2 U.S.C. § 441b(b) and A.R.S. § 16-920(A)(3). A.R.S. § 23-  
14 361.02(E)(2)-(5).

15         32. Despite the vagueness of the SB 1365 phrase “political purposes,” it is  
16 certain that several of the exemptions described in the preceding paragraph will result in  
17 the use of payroll deductions to fund some such “political purposes.” For example,  
18 health insurance providers use the amounts they receive via payroll deduction for  
19 electoral activity, but SB 1365 does not require them to fill out any statement on a  
20 government-prescribed form as to the amount of premiums used for that activity, much  
21 less file such a disclosure statement with every employer in order to receive premium  
22 payments through those employees’ payroll deduction arrangements. *Id.* § 23-  
23 361.02(E)(2).

24         33. Likewise, charitable organizations that receive payroll deductions without  
25 restriction by SB 1365 may, without endangering their tax-exempt status, engage in  
26 substantial amounts of activity for “political purposes” under SB 1365’s capacious  
27 definition. For example, the Arizona State Employees’ Charitable Campaign allows state  
28 employees to make payroll deductions to conservative-leaning organizations such as the

Center for Arizona Policy (which exists to “[p]rotect and defend the family by consistently influencing policy, communicating truth, and empowering citizens to effectively promote timeless family values”) as well as to liberal-leaning organizations such as the Mexican American Legal Defense Fund (which exists to “promote social change through advocacy, communications, community education, and litigation in the areas of education, employment, immigrant rights and political access”). *See* Arizona State Employees Charitable Campaign 2010 Donor Guide (available at <http://www.azsecc.org/pdf/2010%20SECC%20Donor%20Guide%20Alpha%20List.pdf>).

34. Although the avowed purpose of SB 1365 is to “Protect Arizona Employees’ Paychecks from Politics,” the statute does not apply at all to payroll deductions for wholly political purposes such as deductions made for contributions to corporate and union political action committees. A.R.S. § 23-361.02(E)(5).

35. SB 1365 does not apply to payroll deductions requested by any “public safety employee,” which includes “a peace officer, fire fighter, corrections officer, probation officer or surveillance officer, who is employed by this state or a political subdivision of this state.” *Id.* § 23-361.02(H). As a consequence, such employees may continue to pay their union dues via payroll deduction without complying with SB 1365’s disclosure and authorization scheme, and may do so regardless of whether their dues are used—or not used—for “political purposes” within the meaning of SB 1365.

**“POLITICAL” ACTIVITIES AND COLLECTION  
AND REMITTANCE OF MEMBER DUES THROUGH PAYROLL  
DEDUCTIONS**

36. For the 2010-11 school year, 98% of AEA active members have voluntarily chosen to pay their dues to AEA and NEA through deductions from their school district paychecks.

37. SEIU Arizona has many members who voluntarily choose to pay dues to SEIU Arizona and to SEIU via payroll deduction.

38. Each of the AFSCME Plaintiffs has members in Arizona who voluntarily choose to pay dues to AFSCME and their AFSCME local union via payroll deduction.

1           39.     AFTU has many members who voluntarily choose to pay dues via payroll  
2 deduction.

3           40.     The AEA, AFSCME, AFTU, and SEIU Arizona members who have  
4 voluntarily chosen to pay their union dues via payroll deduction have each consented in  
5 writing to the deductions.

6           41.     Plaintiffs England, Scheffler, and Nowak—along with thousands of other  
7 AEA members—have signed individual employment contracts with their school districts  
8 for the 2011-2012 school year. These contracts incorporate all of the applicable school  
9 district’s rules and regulations in place at the time they were signed. *See Rothery v.*  
10 *Cantrell*, 635 P.2d 184, 186 (Ariz. App. Ct. 1981); *Board of Trustees v. Wildermuth*, 492  
11 P.2d 420, 421 (Ariz. App. Ct. 1972). Among the policies incorporated into those  
12 employment contracts are the districts’ existing policies providing for voluntary  
13 deductions of professional dues, as well as detailed policies providing for the manner in  
14 which deductions are authorized, calculated, remitted, and terminated. These payroll-  
15 deduction policies—which are part of the individual teachers’ contracts—are inconsistent  
16 with the requirements of SB 1365 in that they allow for the automatic deduction of the  
17 full amount of a member’s dues, do not require the AEA to submit a declaration  
18 concerning the amount of dues that will be used for “political purposes,” and do not  
19 require members to submit redundant assurances on government-prescribed forms that  
20 they consent to the deduction of the full amount of dues.

21           42.     AEA, NEA, SEIU Arizona, SEIU, AFTU, the AFSCME Plaintiffs, and  
22 AFSCME have used, and will continue to use, member dues for “political purposes”  
23 insofar as the meaning of that phrase in SB 1365 can be discerned, including by way of  
24 making expenditures for: lobbying; public legislative and issue advocacy; publicly  
25 advocating for the passage or defeat of ballot measures; issuing candidate guides;  
26 conducting get-out-the-vote drives; communicating with AEA, NEA, AFTU, the  
27 AFSCME Plaintiffs, AFSCME, SEIU Arizona, and SEIU members to advocate for the  
28 election or defeat of candidates for office or to promote the union’s position among its

1 members on a public issue or importance to those members; and, in the case of NEA,  
 2 AFSCME, AFTU, and SEIU, independent public advertisements advocating the election  
 3 or defeat of candidates for office. In addition, as public sector unions, AEA, AFTU, and  
 4 SEIU Arizona and their local affiliates, and the AFSCME Plaintiffs, engage in “political  
 5 issue advocacy” as part and parcel of their everyday representation of employees by way  
 6 of, for example, advocating to their elected city councils, school boards and  
 7 superintendents to improve the conditions of work and employment of AFSCME, AEA,  
 8 AFTU, and SEIU Arizona members.

9 **EFFECTS OF SB 1365 IN THE ABSENCE OF INJUNCTIVE**  
 10 **AND DECLARATORY RELIEF**

11 43. Because of SB 1365’s vague and expansive definition of “political  
 12 purposes,” as well as because the Attorney General is not charged with prescribing  
 13 disclosure forms that must be used until after the statute’s substantive prohibitions go into  
 14 effect, AEA, AFTU, SEIU Arizona, and the AFSCME Plaintiffs will not be able to  
 15 determine the “maximum percentage” of dues that will be used for “political purposes”  
 16 within the meaning of SB 1365 in advance of the effective date of the statute. At best,  
 17 AEA, AFTU, SEIU Arizona, and the AFSCME Plaintiffs could only guess as to the  
 18 scope of “political purposes” as defined in SB 1365 or how the Attorney General might  
 19 further define that phrase, if he does so at all, yet they face substantial civil liability (a  
 20 penalty of at least \$10,000 per violation) if they guess wrong or make any inadvertent  
 21 mistakes in their filing.

22 44. AEA, SEIU Arizona, AFTU, and the AFSCME Plaintiffs reasonably  
 23 anticipate that at least some of the employers whose employees they represent that  
 24 currently permit dues deduction will refuse to continue to do so given the threat of  
 25 massive fines for even minor violations of SB 1365 and the lack of clarity as to the nature  
 26 of the disclosures and authorizations required.

27 45. As a consequence of all of the above, the effect of the enactment of SB  
 28 1365 is to prevent unions such as the Plaintiffs from continuing to collect union dues via

1 payroll deduction even though other unions (those representing the public safety  
2 employees exempted from the statute) may continue to do so and even though other  
3 entities not covered by the statute (such as health insurance companies) may continue to  
4 use payroll deduction arrangements to collect payments that they then use for, *inter alia*,  
5 political purposes within the meaning of SB 1365.

6         46. In an effort to comply with the impractical burdens imposed on labor  
7 organizations by SB 1365, AEA is now incurring significant expenses in order to arrange  
8 for the collection of dues through mechanisms other than payroll deduction arrangements.  
9 Those costs include: the hiring of temporary organizers to contact every active AEA  
10 member to authorize the payments of dues by recurring electronic fund transfers (EFTs);  
11 the administrative expenses for arranging EFTs; and the diversion of AEA staff from  
12 their usual duties to assist with converting members' dues payments from payroll  
13 deduction to EFTs.

14         47. Likewise, AFSCME and the AFSCME Arizona Plaintiffs also plan to incur  
15 significant expenses in order to arrange for the collection of dues through mechanisms  
16 other than payroll deduction arrangements in order to comply with the burdens imposed  
17 by SB 1365. Those costs may include: the hiring of temporary organizers to contact every  
18 active AFSCME member to authorize the payments of dues by recurring electronic fund  
19 transfers (EFTs); the administrative expenses for arranging EFTs; and the diversion of  
20 AFSCME Plaintiffs' staff, AFSCME staff, and the staff of AFSCME-affiliated unions  
21 from their usual duties to assist with converting members' dues payments from payroll  
22 deduction to EFTs.

23         48. In addition to the costs described above, it is inevitable that AEA, the  
24 AFSCME Plaintiffs, and AFTU will not be able to convert the method of dues payment  
25 for every single member who currently pays dues by payroll deduction. As a result,  
26 AEA, AFTU, and the Plaintiffs will suffer the loss of future dues revenue.

27         49. Even if SB 1365 is found unconstitutional, AEA, the AFSCME Plaintiffs,  
28 and AFTU will never be able to recoup or recover the costs described above because the



1 State of Arizona, the Attorney General, and all other state officials are immune from an  
2 award of damages under the Eleventh Amendment to the United States Constitution.

3 50. If SB 1365 takes effect, SEIU Arizona is likely to cease using member dues  
4 for political purposes, because the costs of collecting dues in some fashion other than  
5 payroll deduction and the risk of criminal liability under SB 1365 are too great. SEIU  
6 Arizona will no longer be able to maintain a Political Director, and will be required to  
7 instruct the international union that dues paid by SEIU Arizona's members cannot be  
8 used for political purposes.

### 9 **SB 1363**

10 51. Arizona Governor Jan Brewer signed SB 1363 into law on April 18, 2011.

11 52. The law's provisions are scheduled to take effect on July 20, 2011.  
12 SB 1363 limits several forms of speech and expressive activity as part of a  
13 comprehensive legislative campaign to quash speech in Arizona by labor organizations  
14 and other individuals and groups representing employees. One supporter of the bill  
15 explained that the bill was passed to protect Arizona business from "increased pressure  
16 on employees" by unions. Video of Senate Commerce and Energy Committee, February  
17 9, 2011 at 56:15 (available at [http://azleg.granicus.com/MediaPlayer.php?view\\_id=13&](http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=8282)  
18 [clip\\_id=8282](http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=8282)).

19 53. Likewise, Senator Frank Antenori (R-Tucson), the principal sponsor of SB  
20 1363, explained that the purpose of the bill was "to protect employers." Video of House  
21 Judiciary Committee, March 24, 2011, at 2:32:48 (available at [http://azleg.granicus.com/](http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=8962)  
22 [MediaPlayer.php?view\\_id=13&clip\\_id=8962](http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=8962)). Senator Antenori frankly admitted that  
23 SB 1363 was passed to ensure that "rights to assemble and rights to free speech don't  
24 interfere with the standard conduction [sic] of businesses. . . ." Video of Senate  
25 Commerce and Energy Committee, February 9, 2011 at 57:30 (available at  
26 [http://azleg.granicus.com/MediaPlayer.php?view\\_id=13&clip\\_id=8282](http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=8282)).

**CONCERTED INTERFERENCE WITH LAWFUL  
EXERCISE OF BUSINESS ACTIVITY**

54. Under SB 1363, §6, “concerted interference with lawful exercise of business activity” is “illegal,” and provides a basis for injunctive relief and civil liability. SB 1363 defines “concerted interference with lawful exercise of business activity” as using “force, intimidation, violence, threats of unlawful activity, destruction of the employer’s real or intangible property, unlawful assembly or defamatory statements to prevent an employer from engaging in any lawful business activity, from using or enjoying its property, from acquiring materials or supplies, or from disposing of its goods, wares or products.” SB 1363, §4(1). It also includes “caus[ing] or induc[ing] a breach or termination of a known contractual relationship or known business expectancy for an improper purpose which results in damage to the employer.” *Id.*

55. SB 1363 does not define “improper purpose” or “intangible property.” *Id.* SB 1363 is also vague as to whether “concerted interference with lawful exercise of business activity” constitutes a crime. *See id.* §7 (providing that “any person who violates any provision of this article is guilty of a class 2 misdemeanor”).

56. SB 1363’s restrictions on “concerted interference with lawful exercise of business activity” will significantly restrict and chill the First Amendment-protected activities of SEIU Arizona and its members, including such activities as leafleting, giving informational speeches, organizing and attending rallies, picketing, petitioning the government, and otherwise publicizing the poor working conditions and labor records of certain employers within Arizona. However, if SB 1363 takes effect, SEIU Arizona and its members will be reluctant to do so out of fear that they will be accused of interfering with lawful business activity.

57. By prohibiting the use of “destruction of the employer’s . . . intangible property” to prevent the employer from “disposing of its goods, wares or products,” and by prohibiting anyone from inducing a breach of a “known business expectancy for an improper purpose,” SB 1363 appears to prohibit nearly all boycotts, all efforts to petition

1 the government to oppose an employer's efforts to procure licenses or other government  
2 privileges, and all other efforts to publicize a dispute with a particular employer to those  
3 who use the employer's "goods, wares or products." SEIU Arizona and its members  
4 sometimes take part in such activities, which are protected under both the First  
5 Amendment and federal labor law. However, if SB 1363 takes effect, SEIU Arizona and  
6 its members will be reluctant to do so out of fear that they will be accused of interfering  
7 with lawful business activity and subject to civil, and possibly criminal, liability.

### 8 **TRESPASSORY ASSEMBLY**

9 58. SB 1363 creates a special form of criminal trespass applicable only to labor  
10 organizations and others acting "on behalf of employees." SB 1363 defines "trespassory  
11 assembly" as "knowingly entering or unlawfully remaining on any property in violation  
12 of" certain state anti-trespassing laws. *Id.* §4(5). Under SB 1363, labor organizations  
13 and other individuals and groups acting "on behalf of employees" are prohibited from  
14 engaging in "trespassory assembly," *id.* §8 (adding A.R.S. §23-1328); and are subject to  
15 criminal prosecution for doing so, *id.* §7. Trespassory assembly also provides a basis for  
16 injunctive relief and civil liability, including damages and attorneys' fees. *Id.* §6.

17 59. No individuals or groups other than labor organizations or those acting "on  
18 behalf of employees" are prohibited from engaging in "trespassory assembly" under SB  
19 1363.

20 60. SB 1363's prohibition of "trespassory assembly" will significantly restrict  
21 and chill the First Amendment-protected activities of SEIU Arizona and its members.  
22 Because SB 1363 subjects labor organizations and others acting on behalf of employees  
23 to a unique criminal trespass statute, SEIU Arizona and its members will be reluctant to  
24 engage in First Amendment-protected activities such as leafleting, rallies, picketing, and  
25 organizing even if they believe that they have a right under state or federal law to remain  
26 on the employer's property.

## UNLAWFUL MASS ASSEMBLY

61. Under SB 1363, anyone who engages in “unlawful mass assembly” is subject to criminal prosecution. *Id.* §§7, 8 (adding A.R.S. §23-1327). Unlawful mass assembly also provides a basis for injunctive relief and civil liability, including damages and attorneys’ fees. *Id.* §6.

62. SB 1363 defines “unlawful mass assembly” as, *inter alia*, “hinder[ing] or prevent[ing] the pursuit of any lawful work or employment by mass assembly, unlawful threats or force”; “obstruct[ing] or interfere[ing] with entrance to or egress from any place of employment”; “obstruct[ing] or interfere[ing] with the free and uninterrupted use of public roads, streets, highways, railways, airports or other means of travel or conveyance”; “us[ing] language or words threatening to do harm to a person or the person’s real or intangible property or designed to incite fear in any person attempting to enter or leave any property”; and assembling in “other than in a reasonable and peaceful manner.” *Id.* §§4(6), 8 (adding A.R.S. §23-1327). SB 1363 does not define broad terms such as “hinder,” “prevent,” or “mass assembly.” SB 1363 does not provide any guidance as to the number of people necessary to constitute “mass assembly.” SB 1363 also does not clarify what it means to assemble “in a reasonable and peaceful manner.”

63. SB 1363’s prohibition of “unlawful mass assembly” will significantly restrict and chill the First Amendment-protected activities of SEIU Arizona and its members. By prohibiting anyone from hindering “the pursuit of any lawful work or employment by mass assembly,” SB 1363’s prohibition on “unlawful mass assembly” could be interpreted to prohibit any group of two or more people from gathering peacefully at a workplace where there is a bona fide labor dispute and providing information to others about poor working conditions or unfair treatment. The vague terms used by SB 1363 in defining “unlawful mass assembly” fail to provide SEIU Arizona and its members with the guidance necessary to determine whether they may face civil and criminal liability for mass assembly, and SEIU Arizona and its members

1 will be reluctant to engage in assembly even where such assembly would otherwise be  
2 legal under Arizona law and protected by the First Amendment.

3 64. Although SB 1363 provides that its restriction on unlawful mass assembly  
4 “does not prohibit assembly to the extent that assembly is authorized under the Arizona  
5 or federal Constitution or federal law,” that proviso will not significantly reduce the  
6 chilling effect of SB 1363 on the protected speech of SEIU Arizona and its members,  
7 because they cannot be sure that their interpretation of state and federal law—to the  
8 extent they understand that body of law—will be shared with whatever court may later  
9 rule in a lawsuit brought against them under SB 1363.

### 10 **UNLAWFUL PICKETING**

11 65. Under SB 1363, anyone who engages in “unlawful picketing” is subject to  
12 criminal prosecution. *Id.* §7. Such picketing also provides a basis for injunctive relief  
13 and civil liability, including damages and attorneys’ fees. *Id.* §6.

14 66. SB 1363 defines “unlawful picketing” to include picketing of an  
15 establishment by a labor organization “unless there exists between the employer and the  
16 majority of employees of such establishment a bona fide dispute regarding wages or  
17 working conditions” as well as picketing by a labor organization whose purpose “is to  
18 coerce or induce an employer or self-employed person to join or contribute to a labor  
19 organization.” *Id.* §§4(7), 5. By prohibiting picketing unless a majority of the employees  
20 of an employer have a bona fide dispute regarding wages or working conditions, the  
21 statute prohibits labor organizations from picketing establishments where they are trying  
22 to mobilize workers but have not yet gained certain support of a majority, where they are  
23 advocating for a minority group of employees against whom the employer is  
24 discriminating, or establishments whose unfair competition injures workers elsewhere.  
25 Because SB 1363 fails to define terms such as “employee,” it is also possible that a labor  
26 organization could be the certified representative of a majority of employees in a  
27 bargaining unit, but be prohibited from picketing because that unit constitutes a minority  
28 of the total workforce. SB 1363 also fails to define what constitutes a “bona fide dispute”

1 or to specify how it will be determined whether a majority of employees have a bona fide  
 2 dispute with the employer. SB 1363 also appears to prohibit labor organizations from  
 3 engaging in picketing relating to issues other than disputes about wages or working  
 4 conditions.

5 67. Arizona's statutory definition of "unlawful picketing" as including the  
 6 picketing of an establishment absent a bona fide dispute between the employer and a  
 7 majority of its employees, which was in effect before SB 1363's passage, has already  
 8 been declared unconstitutional by the Arizona Supreme Court in *Baldwin v. Arizona*  
 9 *Flame Restaurant*, 82 Ariz. 385, 313 P.2d 759 (1957).

10 68. SB 1363's prohibition of "unlawful picketing" will significantly restrict and  
 11 chill the First Amendment-protected activities of SEIU Arizona and its members. SEIU  
 12 Arizona and its members wish to engage in picketing of employers outside the narrow  
 13 contexts that are seemingly permitted under SB 1363, including where SEIU Arizona  
 14 does not yet have the support of a majority of the employer's employees and where the  
 15 subject of the picketing is not "wages or working conditions." SEIU Arizona and its  
 16 members have engaged in such picketing in the past and hope to do so in the future.

#### 17 **DEFAMATION OF AN EMPLOYER**

18 69. SB 1363 defines "defamation of an employer" as "maliciously making a  
 19 false statement about the employer to a third party without privilege"; "knowingly,  
 20 recklessly or negligently disregarding the falsity of the statement"; and "causing damage  
 21 to the employer by the false statement." *Id.* §8 (adding A.R.S. §23-1325).

22 70. SB 1363 permits an employer subject to defamation to obtain injunctive  
 23 relief and damages, including punitive damages. *Id.* SB 1363 provides that "a labor  
 24 union or a subdivision or local chapter of a labor organization is bound by and liable for  
 25 the acts of its agents and may sue or be sued in its common name." *Id.*

26 71. "Defamation of an employer," as defined in SB 1363, may be established  
 27 based on a showing that an individual was negligent as to the falsity of his or her  
 28 statement about an employer to a third party. *Id.* SB 1363 does not require proof that the

1 alleged defamer had actual knowledge of the statement's falsity or acted with reckless  
2 disregard as to the statement's truth or falsity.

3 72. Many of the employees represented by SEIU Arizona are state, county, or  
4 municipal public service employees, and SEIU Arizona seeks to organize other public  
5 employees in Arizona. SEIU Arizona and its members sometimes make statements that  
6 are critical of these public employers by, for example, criticizing their management  
7 practices as wasteful.

8 73. The state, county, and municipal entities that employ SEIU Arizona  
9 members or potential members are "public figures" within the meaning of the First  
10 Amendment. The First Amendment permits liability for defamatory statements about  
11 public figures only where the public figure can demonstrate "actual malice" by showing  
12 that the defendant made a false statement with actual knowledge of the statement's falsity  
13 or reckless disregard as to its truth or falsity. *New York Times v. Sullivan*, 376 U.S. 254,  
14 279-80 (1964).

15 74. Under the National Labor Relations Act (NLRA), the same "actual malice"  
16 standard applies to statements arising from a labor dispute. *Linn v. United Plant Guard*  
17 *Workers*, 383 U.S. 53, 64-65 (1966). SEIU Arizona and its members sometimes make  
18 statements that are critical of private employers in Arizona. The "actual malice" standard  
19 for proving actionable defamation and related torts applies to statements arising from  
20 labor disputes regarding the private employers who employ SEIU Arizona's members or  
21 whose employees SEIU Arizona seeks to organize or represent.

22 75. SB 1363's prohibition of "defamation of an employer" will significantly  
23 restrict and chill the speech of SEIU Arizona and its members. SEIU Arizona and its  
24 members cannot be confident that all courts considering issues involving "defamation of  
25 an employer" will apply the evidentiary standard required by the First Amendment and  
26 the NLRA, rather than the standards set forth in SB 1363, and SEIU Arizona and its  
27 members will be required to establish the unconstitutionality of SB 1363's standard in  
28 every case, after being sued. *See, e.g., Sutter Health v. UNITE HERE*, 186 Cal.App.4th



1 1193 (2010) (reversing jury verdict where trial court failed to require demonstration of  
 2 “actual malice”). Further, many employers will take advantage of the easy availability of  
 3 injunctive relief under SB 1363, discussed *infra* ¶¶ 84-88, to procure injunctions against  
 4 purported “defamation of an employer” before defendants like SEIU Arizona and its  
 5 members have an opportunity to explain the required standard and the unconstitutionality  
 6 of the statute to the court considering the employer’s request for injunction. SEIU  
 7 Arizona and its members are thus likely to be subject to numerous injunctions restraining  
 8 them from speaking in a manner protected by the Constitution or federal labor law.

### 9 **PUBLICIZING ENJOINED PICKETING OR ASSEMBLY**

10 76. SB 1363 provides that “a person shall not declare or publicize the continued  
 11 existence of actual or constructive picketing or assembly at a point or directed against a  
 12 premises, if a court of competent jurisdiction has enjoined the continuation of the  
 13 picketing or assembly at that point or premises.” *Id.* §8 (adding A.R.S. §23-1329). The  
 14 provision does not define “constructive picketing or assembly.” Constructive picketing  
 15 could be construed as including consumer boycotts or public information campaigns that  
 16 are critical of an employer. On its face, SB 1363 prohibits all speech relating to enjoined  
 17 picketing or assembly, even news coverage of the continued existence of picketing  
 18 despite the issuance of an injunction.

19 77. Under SB 1363, anyone who publicizes the continued existence of enjoined  
 20 picketing or assembly is subject to criminal prosecution. *Id.* §7.

21 78. This restriction on publicizing or declaring the continued existence of  
 22 actual or constructive picketing or assembly following the issuance of an injunction will  
 23 significantly restrict and chill the First Amendment-protected rights of SEIU Arizona and  
 24 its members. The threat of criminal liability is likely to prevent SEIU Arizona and its  
 25 members from discussing enjoined picketing even where they have a First Amendment  
 26 right to do so or where the court granting the injunction lacked the power to do so or  
 27 based its decision on insupportable factual or legal conclusions.  
 28

## SECONDARY BOYCOTTS

79. Under SB 1363, “secondary boycotts” are “illegal,” and provide a basis for injunctive relief and civil liability. *Id.* §6. (The secondary boycott provisions of SB 1363 simply restate the existing Arizona law governing secondary boycotts, A.R.S. §§23-1321(3), 23-1323(A)). A “secondary boycott” is defined to include expressive activity such as picketing, striking, or refusing to “otherwise deal with specified articles, materials or services,” that is undertaken “for the purpose of forcing or requiring such other person to recognize, bargain with or comply with the demands of a labor organization, or for the reason that such other person has in his employ persons who are not members of labor organization or is not himself a member of a labor organization, or for the reason that such other person uses goods, materials or services considered objectionable by a labor organization.” *Id.* §4(4)(a). A “secondary boycott” is further defined to include any “act, combination or agreement which directly or indirectly causes, induces, or compels another” to engage in such activity. *Id.* §4(4)(b).

80. In enacting SB 1363, the Legislature provided additional criminal penalties and civil remedies for violations of the secondary boycott restrictions.

81. SB 1363 is vague as to whether participating in, organizing, or supporting a “secondary boycott” constitutes a crime. *See id.* §7.

82. SB 1363 uses vague and broad terms such as “otherwise deal with” and “induce.” As a result, SB 1363 could be interpreted to prohibit a labor organization from even “indirectly” inspiring a consumer boycott by, for example, providing information about the health and safety hazards of a product that “indirectly” persuades consumers to refuse to purchase that product from a store, thereby causing the store to stop stocking the product.

83. SB 1363’s prohibition on secondary boycotts will significantly restrict or chill the boycott-related activities of SEIU Arizona and its members, even when those activities are protected by the Constitution or federal labor law.

**AVAILABILITY OF INJUNCTIVE RELIEF**

84. In addition to the substantive limitations on speech by labor organizations and others “acting on behalf of employees” noted above, SB 1363 contains several procedural provisions.

85. Existing Arizona law permits parties who are being harassed to seek injunctive relief using a special expedited procedure. A.R.S. §12-1809. Employers may also seek injunctive relief against workplace harassment of the employer, its employees, or its customers under a similar expedited procedure. *Id.* §12-1810. Under either procedure, a court may issue an injunction without notice to the defendant if there are reasons for doing so. *Id.* §§12-1809(E), 12-1810(E). Those procedures also permit the warrantless arrest of individuals believed to have violated an injunction issued thereunder. *Id.* §§12-1809(L), 12-1810(M).

86. For purposes of these special expedited procedures, A.R.S. §12-1809(R) defines “harassment” as “a series of acts over any period of time that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys or harasses the person and serves no legitimate purpose,” while A.R.S. §12-1810(R) defines “workplace harassment” as “a single threat or act of physical harm or damage or a series of acts over any period of time that would cause a reasonable person to be seriously alarmed or annoyed.”

87. SB 1363 amends the definitions of “harassment” under §12-1809(R) and “workplace harassment” under §12-1810(R) to include “unlawful picketing, trespassory assembly, unlawful mass assembly, concerted interference with lawful exercise of business activity and engaging in a secondary boycott . . . and defamation [of an employer]. . . .” SB 1363, §§1(R), 2(R).

88. The easy availability of injunctive relief under SB 1363 will significantly restrict and chill the First Amendment-protected activities of SEIU Arizona and its members. SB 1363 permits an employer facing picketing by a labor organization to seek

1 *ex parte* injunctive relief under the special expedited procedures available for victims of  
 2 harassment and workplace harassment, and then to enlist the police department's  
 3 assistance in enforcing that injunction. Because the labor organization need not even be  
 4 given notice before the issuance of an injunction under these procedures, there is a  
 5 significant risk that employers will use deceptive, misleading, or false affidavits to obtain  
 6 injunctions against picketing and other activities that are lawful but that the employer  
 7 wishes to disrupt. *See, e.g., Felix Frankfurter & Nathan Greene, The Labor Injunction*  
 8 63-64 (1931) (noting that, before passage of the federal Norris-LaGuardia Act limited the  
 9 availability of federal court injunctions in labor disputes, courts routinely issued  
 10 injunctions based upon employer allegations that were "perfunctorily dictated" and were  
 11 "transcribed almost verbatim from case to case"). Under SB 1363, employers are also  
 12 likely to seek injunctions against "pure speech" by SEIU Arizona and its members, such  
 13 as critical and purportedly defamatory statements about an employer," notwithstanding  
 14 that such an injunction would amount to a prior restraint on the speech of SEIU Arizona  
 15 and its members.

#### 16 **NO TRESPASS PUBLIC NOTICE LIST**

17 89. SB 1363 directs the Secretary of State to establish a "No Trespass Public  
 18 Notice List." *Id.* §8 (adding A.R.S. §23-1326). The list purports to "identify[] employers  
 19 in this state who have established private property rights to their establishment and any  
 20 related real property in this state." *Id.*

21 90. Employers can add their property to the list by providing the Secretary of  
 22 State with "appropriate documents that establish the employer's private property rights,  
 23 including the address and legal description of the property to which it has legal control."  
 24 *Id.* Twice each year, the Secretary of State is directed to publish the list "one day a week  
 25 for four consecutive weeks in a newspaper of general circulation in the county in which  
 26 the employer is located." *Id.* Under SB 1363, the publication of the list "establishes a  
 27 presumption that all members of the public have notice of all employers and properties  
 28 shown on the list." *Id.*

1           91.     SB 1363 does not provide any process by which a member of the public can  
2 dispute the veracity or accuracy of an employer's property listing.

3           92.     SB 1363 requires every law enforcement agency to maintain "the most  
4 recent No Trespass Public Notice List . . . for its use in responding to complaints of  
5 unlawful picketing, trespassory assembly or unlawful mass assembly." *Id.* For  
6 properties on the list, a responding officer may not require any additional documentation  
7 of the employer's property rights "before requiring any labor organization or individual  
8 or groups of individuals acting on employees' behalf that are engaged in unlawful  
9 picketing, trespassory assembly or mass picketing to leave the employer's property or  
10 cease from blocking ingress to or egress from the employer's property." *Id.* SB 1363  
11 appears to require responding police officers to remove unwanted labor organization  
12 representatives from a listed property even if those representatives have the right under  
13 federal labor law to be on the employer's property, and appears to prohibit *any* "mass  
14 picketing"—not just "unlawful picketing"—in connection with a listed property.

15           93.     By denying SEIU Arizona and its members a meaningful opportunity to  
16 demonstrate the lawfulness of their expressive activities on or around employer  
17 properties listed on the "No Trespass Public Notice List," SB 1363 significantly restricts  
18 and chills the First Amendment-protected activities of SEIU Arizona and its members.

19           94.     SB 1363 also provides that unlawful picketing, unlawful mass assembly,  
20 and trespassory assembly that occur on employer properties listed on the No Trespass  
21 Public Notice List are subject to heightened criminal penalties. *Id.* §7. This requirement  
22 further chills the First Amendment-protected activities of SEIU Arizona and its members  
23 discussed above in relation to each of those three substantive offenses under SB 1363.

#### 24                   **WAGE WITHHOLDING REVOCATION**

25           95.     Federal law permits employers to deduct from an employee's wages that  
26 employee's "membership dues in a labor organization," as long as that deduction is  
27 authorized by "a written assignment" from the employee "which shall not be irrevocable  
28 for a period of more than one year, or beyond the termination date of the applicable

1 collective agreement, whichever occurs sooner.” 29 U.S.C. §186(c)(4). Collecting  
2 members’ dues through wage withholding rather than through direct payment from the  
3 employee to the union is more convenient for employees and limits the cost to the union  
4 associated with enforcing the members’ dues obligations.

5 96. Existing Arizona law generally conforms to this standard, permitting wages  
6 to be withheld from an employee based upon “prior written authorization from the  
7 employee.” A.R.S. §23-352.

8 97. SB 1363 amends existing Arizona law in a manner that is contrary to  
9 federal law. Although federal law permits dues withholding assignments that are  
10 irrevocable for a period of up to one year, SB 1363 permits immediate revocation of any  
11 prior authorization by providing that “[a]n employer shall not withhold wages under a  
12 written authorization from the employee past the date specified by the employee in a  
13 written revocation of the authorization. . . .” SB 1363, §3.

14 98. SEIU Arizona has entered into dues withholding agreements with some of  
15 its members. Those agreements limit the window during which members can rescind  
16 their agreement for dues withholding. Requiring that dues withholding revocation take  
17 place within a particular time window provides SEIU Arizona with predictability as to its  
18 income throughout the year. Permitting immediate revocation of dues withholding will  
19 destroy SEIU Arizona’s ability to predict its income over the course of the year. If some  
20 employees issue untimely revocations that are honored by their employers in accordance  
21 with SB 1363, SEIU Arizona will have no remedy for that employee’s breach of the  
22 withholding agreement, as the cost of enforcing that agreement in court proceedings  
23 would exceed any dues collected.

24 99. The provisions of SB 1363 are not severable, and the Arizona Legislature  
25 did not intend any portions of SB 1363 to remain in effect by themselves if other portions  
26 of the statute were determined to be invalid or unenforceable.

**FIRST CLAIM FOR RELIEF (SB 1365): 42 U.S.C. §1983 -  
DISCRIMINATION IN VIOLATION OF THE FIRST AMENDMENT TO THE  
UNITED STATES CONSTITUTION  
(By All Plaintiffs Against Defendant Horne)**

100. Plaintiffs incorporate and reallege each of the foregoing paragraphs.

101. 42 U.S.C. §1983 provides a cause of action against any persons acting “under color of any statute, ordinance, regulation, custom, or usage, of any State” who cause “the deprivation of any rights, privileges, or immunities secured by the Constitution and law.”

102. The First Amendment to the United States Constitution, which is made applicable to the states through the Fourteenth Amendment, provides that “Congress shall make no law . . . abridging the freedom of speech.”

103. Defendants administer and enforce SB 1365 under color of law.

104. AEA’s members finance their and AEA’s First Amendment activities, SEIU Arizona’s members finance their and SEIU Arizona’s First Amendment activities, AFTU’s members finance their and AFTU’s First Amendment activities, AFSCME members finance their and the AFSCME Plaintiffs’ First Amendment activities—including core political speech activities such as issue advocacy, membership political education, and get-out-the-vote drives—by joining the unions, paying periodic membership dues, and authorizing the unions to collect those dues through the employer’s payroll system.

105. Under SB 1365, a favored class of “public safety” employees may use payroll deductions to financially support their unions, including their unions’ political activities, free of the statute’s restrictions or threat of penalties against their unions. At the same time, SB 1365 forbids all other employees—including members of AEA, SEIU Arizona and the AFSCME Plaintiffs—from authorizing payroll deductions to pay membership dues unless (i) their union discloses to their employer on a form prescribed by the Attorney General the “maximum percentage” of dues that will be used for “political purposes”; (ii) the employee makes a redundant assurance on a form prescribed



1 by the Attorney General that he or she truly intend to support the union he or she already  
 2 has joined and authorized to receive dues from their paychecks; and (iii) the employee's  
 3 union and employer are willing to risk significant civil penalties by honoring an  
 4 employee's authorization request notwithstanding the vagueness of SB 1365's core  
 5 prohibitions.

6 106. The discriminatory treatment of one group of employees over another as  
 7 described above constitutes viewpoint discrimination in violation of the First  
 8 Amendment.

9 107. The treatment of one group of employees over another as described above  
 10 constitutes content discrimination in violation of the First Amendment.

11 108. SB 1365's exemptions for such categories of deductions as "savings or  
 12 charitable contributions," "employee health care, retiree, or welfare benefits," and  
 13 contributions to corporate and union political action committees also constitute viewpoint  
 14 discrimination and content discrimination under the First Amendment.

15 **SECOND CLAIM FOR RELIEF (SB 1365): 42 U.S.C. §1983 -**  
 16 **VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE**  
 17 **FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION**  
**(By All Plaintiffs Against Defendant Horne)**

18 109. Plaintiffs incorporate and reallege each of the foregoing paragraphs.

19 110. The Equal Protection Clause of the Fourteenth Amendment provides that  
 20 "No state shall . . . deny to any person within its jurisdiction the equal protection of the  
 21 laws."

22 111. SB 1365 separates employees into two classes: a favored group of "public  
 23 safety" employees and the residual class of all other public and private employees. SB  
 24 1365 allows the first class of employees to continue supporting their unions' activities by  
 25 the payment of dues through payroll deductions without interference, and it subjects the  
 26 second class of employees and their union representatives to additional burdens in  
 27 authorizing payroll deductions for union dues.  
 28

112. There is no compelling, or even rational, justification for SB 1365's discriminatory treatment of non-"public safety" employees and their union representatives. Instead, SB 1365 appears to have been enacted for the purpose of disadvantaging the employees burdened by the law, while enhancing the political power of another group of employees for whom, in the words of one of SB 1365's sponsors, "there is a soft spot in most of our hearts." That purpose fails the rational-basis test that governs compliance with the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

113. SB 1365 therefore deprives non-"public safety" employees and their union representatives, including plaintiffs, of equal protection of the laws in violation of Fourteenth Amendment.

114. SB 1365's exemptions for such deductions as "savings or charitable contributions," "employee health care, retiree, or welfare benefits," and contributions to corporate and union political action committees also deprive plaintiffs of equal protection of the laws in violation of Fourteenth Amendment.

**THIRD CLAIM FOR RELIEF (SB 1365): 42 U.S.C. §1983 -  
EXCESSIVE VAGUENESS IN VIOLATION OF DUE PROCESS CLAUSE  
OF THE FOURTEENTH AMENDMENT TO  
THE UNITED STATES CONSTITUTION  
(By All Plaintiffs Against Defendant Horne)**

115. Plaintiffs incorporate and reallege each of the foregoing paragraphs.

116. The Due Process Clause of the Fourteenth Amendment provides that "No state shall . . . deprive any person of life, liberty, or property, without due process of law." It is "a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

117. The Act's restrictions are triggered if a union seeking to receive dues by payroll deduction "support[s] or oppos[es] any . . . political issue advocacy." The boundaries of the term "political issue advocacy" are inherently unclear, as the term can

1 be understood to apply not only to matters relating to passage or defeat of legislation, but  
2 also to any number of other matters of public concern.

3 118. Likewise, SB 1365's restrictions are triggered if a union seeking to receive  
4 dues by payroll deduction "support[s] or oppos[es] any . . . political action committee *or*  
5 *other similar group*." SB 1365 does not specify the ways in which a group must be  
6 "similar" to a political action committee, such that support for, or opposition to, the group  
7 will be considered a "political purpose" under the statute. Furthermore, the Supreme  
8 Court's decision in *Citizens United v. FEC*, 130 S. Ct. 875 (2010), enables a vast array of  
9 groups—including 527s, 501(c) nonprofits, and for-profit corporations—to engage in  
10 express political advocacy. As a result, neither a union nor its members can be expected  
11 to determine whether an organization it supports or opposes will subsequently be deemed  
12 to be "similar" to a political action committee. The vagueness of this provision is  
13 particularly vexing insofar as violations of SB 1365 can turn on whether an organization  
14 the union *opposes* is "similar" to a political action committee. For example, if an  
15 unknown entity publicly criticizes the positions taken by a union in collective bargaining,  
16 the union must either sit silent or risk violating SB 1365 by making expenditures to  
17 communicate, even to its own members, in response to the criticism.

18 119. Because SB 1365 imposes strict liability and significant civil penalties on  
19 unions that collect dues by payroll deductions in violation of the statute, the vagaries of  
20 the definitions of "political," "political issue advocacy" and "other similar group" present  
21 particularly grave dangers. A union that makes an honest and reasonable determination  
22 that a particular activity does not qualify as "political," "political issue advocacy" or  
23 support for, or opposition to a "similar group" may nevertheless be fined *at least* \$10,000  
24 per violation for failing to include the costs for that activity in its disclosure to employers.  
25 Those dangers are compounded by the inherent vagueness of the terms "political,"  
26 "political issue advocacy" and "other similar groups," which invites arbitrary or  
27 discriminatory enforcement of SB 1365 by the Attorney General. Moreover, the  
28 vagueness implicates fundamental free speech concerns under the First Amendment.

120. SB 1365 is therefore void for vagueness in violation of the Due Process Clause.

**FOURTH CLAIM FOR RELIEF (SB 1365): 42 U.S.C. §1983 -  
OVERBREADTH IN VIOLATION OF THE FIRST AMENDMENT TO THE  
UNITED STATES CONSTITUTION  
(By All Plaintiffs Against Defendant Horne)**

121. Plaintiffs incorporate and reallege each of the foregoing paragraphs.

122. SB 1365's restrictions are triggered if a union seeking to receive dues by payroll deduction "support[s] or oppos[es] any . . . political issue advocacy" or "political action committee or other similar group." The word "political" and the phrases "political issue advocacy" and "similar" are unconstitutionally vague and not properly tailored to any government interest. As a result, the entirety of SB 1365 is unconstitutionally overbroad under the First Amendment.

**FIFTH CLAIM FOR RELIEF (SB 1365): 42 U.S.C. §1983 -  
IMPOSING UNCONSTITUTIONAL CONDITIONS IN VIOLATION OF THE  
FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION  
(By All Plaintiffs Against Defendant Horne)**

123. Plaintiffs incorporate and reallege each of the foregoing paragraphs.

124. Under the "unconstitutional conditions" doctrine, the government cannot exact waivers of rights as a condition of benefits, even when those benefits are fully discretionary. *See Dolan v. City of Tigard*, 512 U.S. 374, 385 (1994)).

125. Under SB 1365, a public-sector union can receive the valuable benefit of having a government employer honor public-sector employees' voluntary requests for payroll deduction of dues payments only by submitting to an unconstitutional Hobson's Choice: to avoid the statute's crippling penalties, the union must either grossly overestimate—and therefore misrepresent—the amount of dues money it will spend on "political" activities, or accept a more accurate level of "political" spending as a form of prior restraint on speech. If the union elects the former, it will be compelled, not only to speak, but to speak in a manner that gives its members an inaccurate impression of its activities, thereby intruding on the right of the union to associate with its members. If the

1 union elects the latter option, it will effectively be silenced and unable to respond to  
 2 spontaneous or unanticipated political events once it reaches its allotted amount of  
 3 political activity. Thus, SB 1365 not only intrudes on political and associational  
 4 activities, its penalty provisions function to impose an unconstitutional prior restraint on  
 5 speech.

6 126. By conditioning the receipt of a payroll deduction on the surrender of rights  
 7 protected by the First Amendment, SB 1365 unlawfully imposes unconstitutional  
 8 conditions on AEA, AFTU, SEIU Arizona, and the AFSCME Plaintiffs.

9 **SIXTH CLAIM FOR RELIEF (SB 1365): 42 U.S.C. §1983 -**  
 10 **IMPAIRMENT OF CONTRACTS IN VIOLATION OF**  
 11 **ARTICLE I OF THE UNITED STATES CONSTITUTION**  
 12 **(By Plaintiffs AEA, England, Scheffler, Nowak, Local 449, Local 2384, Local 2960,**  
 13 **and Local 3282 Against Defendant Horne)**

14 127. Plaintiffs incorporate and reallege each of the foregoing paragraphs.

15 128. The Contracts Clause of Article I, Section 10 of the United States  
 16 Constitution provides that: “No State shall . . . pass any Law impairing the Obligations of  
 17 Contracts.”

18 129. Plaintiffs England, Scheffler, and Nowak—along with thousands of other  
 19 AEA members—have individual employment contracts with their school districts that  
 20 incorporate existing school district policies providing for voluntary deductions of  
 21 professional dues, as well as detailed policies providing for the manner in which  
 22 deductions for membership dues are authorized, calculated, remitted, and terminated.  
 23 These payroll-deduction policies—which are part of the individual teachers’ contracts—  
 24 are inconsistent with the requirements of SB 1365.

25 130. Locals 449, 2384, 2960 and 3282 each have contracts with their members’  
 26 public sector employers. Each of those contracts provides for the deduction of AFSCME  
 27 dues from the pay of AFSCME members who authorize such deductions, and provides  
 28 for the manner in which such deduction shall be made. These contract provisions are  
 inconsistent with the requirements of SB 1365.

1           131. Because SB 1365 does not exempt existing contracts from its restrictions, it  
2 substantially impairs the contractual rights of Plaintiffs England, Scheffler, Nowak and  
3 other AEA members, in that it effectively terminates their existing individual  
4 authorizations for payroll deductions, requires AEA to submit a declaration concerning  
5 the amount of dues that will be used for “political purposes,” requires school districts to  
6 deduct less than the full amount of dues if members do not submit redundant assurances  
7 on government-prescribed forms that they consent to the deduction of the full amount of  
8 dues, and subjects AEA to massive fines for honest and/or reasonable failures to account  
9 for its “political” activities in the manner SB 1365 demands.

10           132. SB 1365 also substantially impairs the contractual rights of Locals 449,  
11 2384, 2960 and 3282 in that it effectively invalidates those provisions of the contracts  
12 between each of those AFSCME Locals and their members’ employers providing for the  
13 voluntary deduction of union dues from the pay of AFSCME members, requires those  
14 local union to submit a declaration concerning the amount of dues that will be used for  
15 “political purposes,” requires employers to deduct less than the full amount of dues if  
16 members do not submit redundant assurances on government-prescribed forms that they  
17 consent to the deduction of the full amount of dues, and subjects the local unions to  
18 massive fines for honest and/or reasonable failures to account for “political” activities in  
19 the manner SB 1365 demands.

20           133. The contractual impairment caused by SB 1365 is not justified by any  
21 significant and legitimate public purpose, such as the remedying of a broad and general  
22 social or economic problem. Since the state’s existing Right to Work laws already ensure  
23 that employees cannot be compelled to involuntarily support a union, the only  
24 discernable purpose of SB 1365 is the improper one of frustrating either (or both) a  
25 union’s ability to engage in core First Amendment activities or the union members’  
26 ability to voluntarily support the activities of their unions.

27           134. Even if SB 1365 were justified by a significant and legitimate public  
28 purpose, it is not a reasonable and necessary means of accomplishing that purpose. SB

1 1365's intrusive disclosure requirements and scheme of crippling fines bear no rational  
 2 relationship to the avowed purpose of the statute. Furthermore, its vague definition of  
 3 "political" activities does not allow unions to make intelligent and legally secure  
 4 decisions about how to comply with the law.

5 135. Accordingly, SB 1365 violates the Contracts Clause.

6 **SEVENTH CLAIM FOR RELIEF (SB 1365): 42 U.S.C. § 1983 -**  
 7 **PREEMPTION BY THE FEDERAL ELECTION CAMPAIGN ACT AND**  
 8 **VIOLATION OF ARTICLE VI OF THE UNITED STATES CONSTITUTION**  
 9 **(By All Plaintiffs Against Defendant Horne)**

10 136. Plaintiffs incorporate and reallege each of the foregoing paragraphs.

11 137. Article VI of the United States Constitution provides that: "This  
 12 Constitution and the laws of the United States . . . shall be the supreme law of the land."

13 138. The Federal Election Campaign Act (FECA), 2 U.S.C. §431, *et seq.*, was  
 14 enacted to put into place a comprehensive system of regulation for federal elections.  
 15 FECA includes a preemption provision, which states that "[t]he provisions of this Act,  
 16 and of rules prescribed under this Act, supersede and preempt any provisions of state law  
 17 with respect to election to Federal office." 2 U.S.C. §453. In this provision, Congress  
 18 expressed its desire to occupy the field with respect to elections to federal office, thereby  
 19 making federal law the sole authority under which such federal elections and campaign  
 20 activity will be regulated.

21 139. FECA and its regulations ensure the right of a union to use dues money for  
 22 a variety of activities that would be considered "political" under the SB 1365. Under  
 23 FECA and its regulations, unions are expressly allowed to use dues to communicate with  
 24 their members "on any subject," 2 U.S.C. §441b(b)(2)(A), which includes expressly  
 25 advocating the election or defeat of a federal candidate, 11 C.F.R. §114.3(c). Similarly,  
 26 unions are allowed to use dues for get-out-the-vote efforts in federal elections, voter  
 27 guides in federal elections, and endorsements of federal candidates. *See* 11 C.F.R.  
 28 §§114.3(c)(4), 114.4(c)(2), (5), (6). Meanwhile, SB 1365 creates overlapping and



1 conflicting state regulation on the use of union dues for “political purposes,” including  
2 “supporting or opposing any candidate for public office [or] political party.”

3 140. Likewise, FECA and its regulations expressly permit a union to use dues  
4 money for the establishment, administration, and solicitation of contributions to its  
5 connected federally-registered political action committee. *See* 2 U.S.C. §441b(b)(2)(C);  
6 11 CFR §114.1(a)(2)(iii); *see also* 2 U.S.C. §431(8)(B)(vi), (9)(B)(v). Meanwhile, SB  
7 1365 creates overlapping and conflicting state regulation on the use of union dues for  
8 “political purposes,” including “supporting . . . any . . . political action committee.”

9 141. By regulating in an area that Congress expressly reserved solely for federal  
10 law, SB 1365 violates the Supremacy Clause both directly and as made applicable by 42  
11 U.S.C. §1983.

12 **EIGHTH CLAIM FOR RELIEF (SB 1363): 42 U.S.C. §1983 -**  
13 **CONTENT AND VIEWPOINT DISCRIMINATION IN VIOLATION OF THE**  
14 **FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION**  
**(By Plaintiff SEIU Arizona Against Defendants Horne, Bennett, and Arpaio)**

15 142. Plaintiff SEIU Arizona incorporates and realleges each of the foregoing  
16 paragraphs.

17 143. Defendants Horne, Bennett, and Arpaio administer and enforce SB 1363  
18 under color of law.

19 144. If permitted to take effect, SB 1363 will chill SEIU Arizona from  
20 exercising its right to engage in speech and expressive activity protected by the First  
21 Amendment to the United States Constitution.

22 145. SB 1363 imposes viewpoint- and content-based restrictions on speech and  
23 expressive activity. For example, SB 1363 restricts “secondary boycotts” only if  
24 conducted for purposes related to labor organizations or because the good, material, or  
25 service is “considered objectionable by a labor organization.” A.R.S. §23-1321(4).  
26 Likewise, SB 1363 restricts defamation only if it is “about [an] employer.” *Id.* §23-1325.

27 146. SB 1363 also imposes greater restrictions on speech and expressive activity  
28 by labor organizations and individuals or groups acting on behalf of employees than other

1 speakers. For example, under SB 1363, “unlawful picketing” is defined to prohibit  
2 expressive conduct by labor organizations only. *Id.* §23-1322.

3 147. SB 1363 also imposes greater criminal and civil penalties and remedies  
4 against labor organizations and individuals or groups acting on behalf of employees than  
5 other individuals engaged in the same conduct. For example, under SB 1363, only labor  
6 organizations and individuals or groups acting on behalf of employees are prohibited  
7 from engaging in “trespassory assembly.” *Id.* §23-1328. As a result, only labor  
8 organizations and individuals or groups acting on behalf of employees are subject to  
9 greater criminal liability and minimum criminal penalties for violating Arizona’s criminal  
10 trespass statutes.

11 148. SB 1363 also provides special protections to employers against speech and  
12 expressive activity. For example, SB 1363 prohibits only defamation of employers, and  
13 makes only a labor union or labor organization liable for defamation of an employer by  
14 its agents. *Id.* §23-1325. Likewise, SB 1363 protects only employers from interference  
15 with lawful exercise of business activity. *Id.* §23-1321(1). Similarly, the special  
16 protections afforded by the “no trespass public notice list” provisions under A.R.S. §23-  
17 1326 are available only to employers. Further, a peace officer responding to a complaint  
18 by an employer who has listed its property on the “no trespass public notice list” is  
19 prohibited from requiring the employer from providing further documentation of its  
20 property rights only if the persons allegedly engaged in unlawful picketing, trespassory  
21 assembly, or unlawful mass assembly are labor organizations or individuals or groups  
22 acting on behalf of employees.

23 149. The viewpoint- and content-based restrictions on speech and expressive  
24 activity are not narrowly tailored to serve a compelling state interest and there are less  
25 restrictive alternatives available.

26 150. The discriminatory treatment of labor organizations and individuals acting  
27 on behalf of employees constitutes viewpoint discrimination in violation of the First  
28

1 Amendment. That discriminatory treatment also constitutes content discrimination in  
2 violation of the First Amendment.

3 151. The discriminatory treatment of speech and expressive activity related to  
4 employers constitutes viewpoint discrimination in violation of the First Amendment.  
5 That discriminatory treatment also constitutes content discrimination in violation of the  
6 First Amendment.

7 **NINTH CLAIM FOR RELIEF (SB 1363): 42 U.S.C. §1983 -**  
8 **OVERBREADTH IN VIOLATION OF THE FIRST AMENDMENT**  
9 **TO THE UNITED STATES CONSTITUTION**  
10 **(By Plaintiff SEIU Arizona Against Defendants Horne, Bennett, and Arpaio)**

11 152. Plaintiff SEIU Arizona incorporates and realleges each of the foregoing  
12 paragraphs.

13 153. Defendants Horne, Bennett, and Arpaio administer and enforce SB 1363  
14 under color of law.

15 154. SB 1363 regulates concerted interference with lawful exercise of business  
16 activity, secondary boycott, mass assembly, trespassory assembly, picketing, defamation,  
17 and publicizing enjoined picketing or assembly. These regulations are unconstitutionally  
18 vague and not properly tailored to any government interest. As a result, these regulations  
19 are unconstitutionally overbroad under the First Amendment.

20 155. For example, SB 1363 provides that a person violates its prohibition of  
21 “unlawful mass assembly” by “hinder[ing] or prevent[ing] the pursuit of any lawful work  
22 or employment by mass assembly.” A.R.S. §23-1327(A)(1). SB 1363 fails to define the  
23 minimum number of people necessary to constitute “mass assembly.” Nor does SB 1363  
24 define the terms “hinder” or “prevent.” These terms could be construed to include  
25 persuading another to refuse to work for an employer using protected speech. Similarly,  
26 a person engages in unlawful mass assembly by “us[ing] language or words . . . designed  
27 to incite fear in any person attempting to enter or leave any property.” SB 1363 fails to  
28 define the term “designed to incite fear,” which could be construed to include warnings  
of danger. As a result, SB 1363’s restrictions on mass assembly are unconstitutionally

1 vague and not properly tailored to any government interest. The provision stating that the  
 2 section proscribing unlawful mass assembly “does not prohibit assembly to the extent  
 3 that assembly is authorized under the Arizona or federal Constitution or federal law” does  
 4 not cure the unconstitutional vagueness and overbreadth.

5 156. Likewise, SB 1363 defines defamation of an employer to include making a  
 6 false statement about an employer while “negligently disregarding the falsity of the  
 7 statement.” A.R.S. §23-1325(A). The term “employer” could be construed to include  
 8 public officers or public figures. Under *New York Times Co. v. Sullivan*, 376 U.S. 254  
 9 (1964), a statute that imposes liability for statements about the official conduct of a  
 10 public officer or public figure made with negligent, as opposed to knowing or reckless,  
 11 disregard for falsity unconstitutionally interferes with First Amendment guarantees.  
 12 Thus, SB 1363’s restrictions on defamation of an employer are unconstitutionally vague  
 13 and overbroad under the First Amendment.

14 **TENTH CLAIM FOR RELIEF (SB 1363): 42 U.S.C. §1983 -**  
 15 **PRIOR RESTRAINT IN VIOLATION OF THE FIRST AMENDMENT**  
 16 **TO THE UNITED STATES CONSTITUTION**  
 17 **(By Plaintiff SEIU Arizona Against Defendants Horne, Bennett, and Arpaio)**

18 157. Plaintiff SEIU Arizona incorporates and realleges each of the foregoing  
 19 paragraphs.

20 158. Defendants Horne, Bennett, and Arpaio administer and enforce SB 1363  
 21 under color of law.

22 159. SB 1363 violates the First Amendment by imposing prior restraints on  
 23 speech and expressive activity protected by the First Amendment.

24 160. For example, SB 1363 authorizes the issuance of an injunction against  
 25 protected speech and expressive activity. A.R.S. §12-1809. These prior restraints are not  
 26 narrowly tailored to serve a compelling state interest and are not the least restrictive  
 27 alternative.  
 28

**ELEVENTH CLAIM FOR RELIEF (SB 1363): 42 U.S.C. §1983 -  
RESTRICTION ON SPEECH IN A PUBLIC FORUM IN VIOLATION OF THE  
FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION  
(By Plaintiff SEIU Arizona Against Defendants Horne, Bennett, and Arpaio)**

161. Plaintiff SEIU Arizona incorporates and realleges each of the foregoing paragraphs.

162. Defendants Horne, Bennett, and Arpaio administer and enforce SB 1363 under color of law.

163. SB 1363 violates the First Amendment by prohibiting speech or expressive conduct in public forums.

164. For example, SB 1363 prohibits a person from “obstruct[ing] or interfere[ing] with the free and uninterrupted use of public roads, streets,” and other means of travel or conveyance. SB 1363 fails to permit expressive conduct in public roads or streets at any time or in any manner. As a result, this restriction is unconstitutionally overbroad, is not narrowly tailored to serve any significant government interest, and leaves no ample alternative channel for communication.

**TWELFTH CLAIM FOR RELIEF (SB 1363): 42 U.S.C. §1983 -  
VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE  
FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION  
(By Plaintiff SEIU Arizona Against Defendants Horne, Bennett, and Arpaio)**

165. Plaintiff SEIU Arizona incorporates and realleges each of the foregoing paragraphs.

166. Defendants Horne, Bennett, and Arpaio administer and enforce SB 1363 under color of law.

167. SB 1363 discriminates against labor organizations and individuals or groups of individuals acting on behalf of employees.

168. The distinction drawn by SB 1363 between labor organizations and individuals or groups acting on behalf of employees, on the one hand, and all others who are similarly situated, on the other, is subject to strict scrutiny because SB 1363 infringes on plaintiff SEIU Arizona’s fundamental rights. This distinction is not necessary to serve

1 a compelling state interest or narrowly tailored to that interest. This distinction also lacks  
2 any rational basis.

3 169. SB 1363's prohibition of secondary boycotts for goods, materials, or  
4 services considered objectionable by a labor organization but not other kinds of groups is  
5 not necessary to serve a compelling state interest or narrowly tailored to that interest.  
6 This distinction also lacks any rational basis.

7 170. SB 1363 discriminates in favor of employers. The distinction drawn by SB  
8 1363 between employers and others who are similarly situated is subject to strict scrutiny  
9 because SB 1363 infringes on plaintiff SEIU Arizona's fundamental rights. This  
10 distinction is not necessary to serve a compelling state interest or narrowly tailored to that  
11 interest. This distinction also lacks any rational basis.

12 **THIRTEENTH CLAIM FOR RELIEF (SB 1363): 42 U.S.C. §1983 -**  
13 **EXCESSIVE VAGUENESS IN VIOLATION OF THE DUE PROCESS CLAUSE**  
14 **OF THE FOURTEENTH AMENDMENT TO**  
15 **THE UNITED STATES CONSTITUTION**  
**(By Plaintiff SEIU Arizona Against Defendants Horne, Bennett, and Arpaio)**

16 171. Plaintiff SEIU Arizona incorporates and realleges each of the foregoing  
17 paragraphs.

18 172. Defendants Horne, Bennett, and Arpaio administer and enforce SB 1363  
19 under color of law.

20 173. SB 1363 imposes criminal liability on any person who violates any  
21 provision of Title 23, chapter 8, article 2. This article, as amended by SB 1363, uses  
22 numerous undefined, broad, and/or inherently unclear terms to describe activity,  
23 including speech or expressive conduct, that it proscribes. Those terms fail to provide  
24 SEIU Arizona and its members with adequate notice of conduct proscribed thereby.

**FOURTEENTH CLAIM FOR RELIEF (SB 1363 AND SB 1365): PREEMPTION  
BY FEDERAL LABOR LAW AND VIOLATION OF ARTICLE VI  
OF THE UNITED STATES CONSTITUTION  
(By Plaintiff SEIU Arizona Against Horne, Bennett, and Arpaio)**

174. Plaintiff SEIU Arizona incorporates and realleges all of the foregoing paragraphs.

175. Defendants Horne, Bennett, and Arpaio administer and enforce SB 1363 under color of law. Defendant Horne administers and enforces SB 1365 under color of law.

176. Article VI of the United States Constitution provides that: “This Constitution, and the laws of the United States . . . shall be the supreme law of the land.”

177. Federal labor law comprehensively regulates the rights and obligations of employees and labor organizations in dealing with private-sector employers, and the National Labor Relations Act preempts any state law regulating activities that are actually or arguably protected or prohibited by the NLRA, *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959), as well as laws regulating labor-related activities that Congress did not regulate through the NLRA but intended to be free from regulation altogether, *Machinists v. Wisconsin Employment Relations Comm’n*, 427 U.S. 132 (1971).

178. SB 1363’s regulations of “concerted interference with lawful exercise of business activity,” “unlawful picketing,” “unlawful mass assembly,” “trespassory assembly,” secondary boycotts, defamation of an employer, and declaring or publicizing the continued existence of actual or constructive picketing that has been enjoined; SB 1363’s expansion of the availability of injunctive relief for such actions; and SB 1363’s creation of a “No Trespass Public Notice List” regulate activities that are actually or arguably protected or prohibited by the NLRA, or that Congress intended to be free from regulation.

179. The NLRA comprehensively regulates the terms of union-member relationships, the obligation of unions and employers to bargain over voluntary dues



1 withholding, and unions' ability to use member dues for political purposes. The NLRA  
 2 also narrowly limits the scope of the states' authority to regulate any of these subjects. In  
 3 addition, federal labor law expressly permits employees to enter into written dues  
 4 withholding agreements with labor organizations that are irrevocable for up to one year.  
 5 29 U.S.C. §186(c)(4).

6 180. By imposing additional requirements upon voluntary dues withholding  
 7 agreements between unions, their members, and the members' employers, SB 1363 and  
 8 SB 1365 regulate activities that are actually or arguably protected or prohibited by federal  
 9 labor law or that Congress intended to be free from regulation.

10 181. By regulating in areas governed by federal labor law, SB 1363 and SB 1365  
 11 violate the Supremacy Clause both directly and as made applicable by 42 U.S.C. §1983.

## 12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs respectfully pray that this Court:

- 14 a. Enter a declaratory judgment that SB 1365 violates the rights of plaintiffs  
 15 under the First and Fourteenth Amendments and Articles I and VI of the  
 16 United States Constitution;
- 17 b. Enter a preliminary injunction preventing defendant Horne, his successors,  
 18 and all those acting in concert with him or at his direction from  
 19 implementing or enforcing SB 1365;
- 20 c. Enter a permanent injunction preventing defendant Horne, his successors,  
 21 and all those acting in concert with him or at his direction from  
 22 implementing or enforcing SB 1365;
- 23 d. Enter a declaratory judgment that SB 1363 and the limitations on secondary  
 24 boycotts and unlawful picketing in A.R.S. §§23-1322 and 23-1323 violate  
 25 the rights of plaintiff SEIU Arizona under the First and Fourteenth  
 26 Amendments and Article VI of the United States Constitution;
- 27 e. Enter a preliminary injunction preventing defendants, their successors, and  
 28 all those acting in concert with them or at their direction from

- 1 implementing or enforcing SB 1363 or the limitations on secondary  
2 boycotts and unlawful picketing in A.R.S. §§23-1322 and 23-1323;
- 3 f. Enter a permanent injunction preventing defendants, their successors, and  
4 all those acting in concert with them or at their direction from  
5 implementing or enforcing SB 1363 or the limitations on secondary  
6 boycotts and unlawful picketing in A.R.S. §§23-1322 and 23-1323;
- 7 g. Award plaintiffs attorneys' fees and costs pursuant to 42 U.S.C. §1988 and  
8 such other statutory and common law provisions as may be applicable; and
- 9 h. Grant such other and further relief as may be necessary and proper,  
10 including such other relief as may be necessary to restore the status quo  
11 ante.

12 Respectfully submitted this 23rd day of June, 2011.

13 Coppersmith Schermer & Brockelman PLC

14  
15 By s/ Roopali H. Desai  
Roopali H. Desai

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15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on June 23, 2011, I electronically transmitted the attached  
17 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a  
18 Notice of Electronic Filing to all CM/ECF registrants.

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20 s/ Sheri McAlister  
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